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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,518

05/09/2005

Gunther Beisel

FI-52PCT

4424

40570

7590

03/25/2008

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EXAMINER

HENRY, MICHAEL C

ART UNIT

PAPER NUMBER

1623

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,518	<b>Applicant(s)</b> BEISEL, GUNTHER	
	<b>Examiner</b> MICHAEL C. HENRY	<b>Art Unit</b> 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/01/07.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The following office action is a responsive to the Amendment filed, 10/01/07.

The amendment filed 10/01/07 affects the application, 10/511,518 as follows:

Claims 1 and 7 have been amended. Claim 13 has been canceled.

The responsive is contained herein below.

Claims 1-4, 6, 7, 12, 14-15 are pending in application

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (GB 1302275).

In claim 1, applicant claims an “Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the anionic polymer is present as an aluminum salt, and wherein the agent also contains active ingredients. Young et al. disclose applicant’s agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein aluminum ions (active ingredients) are incorporated fruit material that is encapsulated (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Young et al.’s agent is a reconstructed or simulated food product that comprises fruit pulp or puree encapsulated in a skin of aluminum alginate gel (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and

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claim 1). It should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that “intended use” of a composition or product, e.g., for producing a satiety effect for weight loss, does not further limit claims drawn to a composition or product.

See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161.

Furthermore, since Young et al.’s agent consist of the same gel of the same anionic polymer aluminum salt as applicant’s agent (and no other different or distinguishing ingredients) then Young et al.’s agent should inherently provide the same satiety or weight loss effect as applicant’s agent. In addition, Young et al.’s disclose that their alginate gel can behave as a semipermeable (page 2, col. 1, lines 14-19). This implies that the alginate gel is porous. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form.

Young et al. disclose applicant’s agent, wherein the agent is present in compressed form (encapsulated form) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner considers Young et al.’s encapsulated form of the said agent a compressed form, since said agent is shaped (compressed) into an encapsulated form.

Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Young et al., since Young et al. agent contains aluminum alginate (see page 1, col. 1, lines 27-41; see page 1, col. 1, lines 11-22 and claim 1). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Young et al., since Young et al. agent is present as aluminum alginate (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claim 6 is drawn said agent according to claim 1, wherein the agent also contains active ingredients that include vitamins,

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trace elements, or medicinal compounds. Young et al. disclose applicant's agent, wherein the agent also contains incorporated aluminum or calcium ion (trace elements or active ingredients) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, wherein the agent is formed of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Young et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Young et al., since Young et al. also use said agent contains aluminum alginate (see col. 1, lines 27-41).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (GB 1302275).

In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

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Young et al. disclose applicant's composition consisting of porous gel or foam of at least one anionic polymer (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Furthermore, Young et al. disclose that said composition is edible. Young fails to disclose that the composition can provide a satiety effect. However, Young et al.'s composition should also produce a satiety effect based on the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

### ***Response Arguments***

Applicant's arguments with respect to claims 1-4, 6, 7, 12-15 have been considered but are not found convincing.

The applicant argues that in the passage cited by the Examiner (page 1, col. I, lines 27-41) in the reference there is there is no mention that aluminum is an active ingredient. Instead, what this passage states is that via calcium or aluminum ions, which are contacted with an alginate sol in drop form, the alginate skin is formed. By this step, above all, the aluminum alginate, which then envelopes the fruit pulp, is formed first. There is no mention by Young that

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aluminum is an active ingredient. However in addition, Young discloses that there are dissolved aluminum ions or calcium ions in the interior of the drops (page 1, col. 1, lines 27-41, especially lines 36-41). Also, it should be noted that Young's ingredient (aluminum, a trace element) is the same as applicant's active ingredient.

The applicant argues that it is further incorrect to count the aluminum ions of the aluminum alginate as trace elements. Since the aluminum ions form counterions to the anionic groups of the alginate polymer, they cannot simply be separated and then used as trace elements, because the principal of charge neutrality of compounds also holds true in this situation - trace elements that act as active ingredients must be readily accessible to the body without problems. However, Young discloses that there are dissolved aluminum ions or calcium ions in the interior of the drops (page 1, col. 1, lines 27-41, especially lines 36-41). Also, it should be noted that Young's ingredient (aluminum, a trace element) is the same as applicant's active ingredient. Furthermore, the said dissolved aluminum ions (trace element) that act as active ingredients would be readily accessible to the body without problems.

The applicant argues that trace elements in the dietary or nutritional purposes do not normally include aluminum. On the contrary however, aluminum is a well known trace element and applicant's composition which is intended for oral consumption also contains aluminum. Furthermore, Young's product is also intended for oral consumption (a food product) (see page 1, col. 1, lines 27-41).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8.30am-5pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Michael C. Henry

March 15, 2008.

/Shaojia Anna Jiang, Ph.D./  
Supervisory Patent Examiner, Art Unit 1623